

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MIGUEL J. LANGE,

Plaintiff,

v.

C/O D. GRISSOM, et al.,

Defendants.

CASE NO. 1:05-CV-00360-AWI-SMS-P

ORDER DISMISSING COMPLAINT, WITH  
LEAVE TO AMEND

(Doc. 1)

I. Screening Order

A. Screening Requirement

Plaintiff Miguel J. Lange (“plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on March 18, 2005.

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

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1 A complaint, or portion thereof, should only be dismissed for failure to state a claim upon  
 2 which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in  
 3 support of the claim or claims that would entitle him to relief. See Hishon v. King & Spalding, 467  
 4 U.S. 69, 73 (1984), citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957); see also Palmer v. Roosevelt  
 5 Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under this  
 6 standard, the court must accept as true the allegations of the complaint in question, Hospital Bldg.  
 7 Co. v. Rex Hospital Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light most  
 8 favorable to the plaintiff, and resolve all doubts in the plaintiff's favor. Jenkins v. McKeithen, 395  
 9 U.S. 411, 421 (1969).

#### 10 B. Plaintiff's Claims

11 The events at issue in the instant action allegedly occurred at Avenal State Prison, where  
 12 plaintiff was incarcerated at the time. Plaintiff names Warden K. Mendoza-Powers, Captain  
 13 Newton, and Correctional Officer D. Grissom as defendants. Plaintiff is seeking money damages,  
 14 and alleges that defendant Grissom beat him with a baton on the orders of defendant Newton, in  
 15 violation of plaintiff's rights under the Eighth Amendment. Plaintiff further alleges that he was  
 16 denied medical care after the incident of force.

##### 17 1. Excessive Force Claim

18 \_\_\_\_\_ "Whenever prison officials stand accused of using excessive physical force in violation of  
 19 the Cruel and Unusual Punishment Clause [of the Eighth Amendment], the core judicial inquiry is  
 20 . . . whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously  
 21 and sadistically to cause harm." Hudson v. McMillian, 503 U.S. 1, 7 (1992) (citing Whitley v.  
 22 Albers, 475 U.S. 312, 320-21 (1986)). "In determining whether the use of force was wanton and  
 23 unnecessary, it may also be proper to evaluate the need for application of force, the relationship  
 24 between the need and the amount of force used, the threat 'reasonably perceived by the responsible  
 25 officials,' and 'any efforts made to temper the severity of a forceful response.'" Hudson, 503 U.S.  
 26 at 7. "The absence of serious injury is . . . relevant to the Eighth Amendment inquiry, but does not  
 27 end it." Id.

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1 Not “every malevolent touch by a prison guard gives rise to a federal cause of action. Id. at  
 2 9. “Not every push or shove, even if it may later seem unnecessary in the peace of a judge’s  
 3 chambers, violates a prisoner’s constitutional rights.” Id. (citing Johnson v. Glick, 481 F.2d 1028,  
 4 1033 (2nd Cir. 1973) (cert. denied sub nom. Johnson, 414 U.S. 1033 (1973))). “The Eighth  
 5 Amendment’s prohibition of ‘cruel and unusual’ punishments necessarily excludes from  
 6 constitutional recognition de minimis uses of physical force, provided that the use of force is not of  
 7 a sort ‘repugnant to the conscience of mankind.’” Id. at 9-10.

8 Plaintiff’s conclusory allegations that he was beaten with a baton during an extraction from  
 9 the shower and then denied medical treatment are insufficient to support a claim that the force used  
 10 against him was excessive, thereby violating his Eighth Amendment rights. The court will provide  
 11 plaintiff with the opportunity to file an amended complaint clarifying his claim.

## 12 2. Claim Against Warden Mendoza-Powers

13 Plaintiff names Warden Mendoza-Powers as a defendant. Liability may not be imposed on  
 14 supervisory personnel under section 1983 for the actions of their employees under a theory of  
 15 respondeat superior. When the named defendant holds a supervisory position, the causal link  
 16 between her and the claimed constitutional violation must be specifically alleged. See Fayle v.  
 17 Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978),  
 18 cert. denied, 442 U.S. 941 (1979). To state a claim for relief under section 1983 for supervisory  
 19 liability, plaintiff must allege some facts indicating that defendant Mendoza-Powers either:  
 20 personally participated in the alleged deprivation of constitutional rights; knew of the violations and  
 21 failed to act to prevent them; or promulgated or “implemented a policy so deficient that the policy  
 22 ‘itself is a repudiation of constitutional rights’ and is ‘the moving force of the constitutional  
 23 violation.’” Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989) (internal citations omitted); Taylor  
 24 v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). Although federal pleading standards are broad, some  
 25 facts must be alleged to support claims under section 1983. See Leatherman v. Tarrant County  
 26 Narcotics Unit, 507 U.S. 163, 168 (1993).

27 Plaintiff has not alleged any facts that would support a claim that defendant Mendoza-Powers  
 28 personally participated in the alleged deprivation of constitutional rights; knew of the violations and

1 failed to act to prevent them; or promulgated or “implemented a policy so deficient that the policy  
2 ‘itself is a repudiation of constitutional rights’ and is ‘the moving force of the constitutional  
3 violation.’” Hansen v. Black at 646. Accordingly, plaintiff fails to state any claims under section  
4 1983 against defendant Mendoza-Powers.

5 C. Conclusion

6 The court finds that plaintiff’s complaint does not contain any claims upon which relief may  
7 be granted under section 1983. The court will provide plaintiff with the opportunity to file an  
8 amended complaint curing the deficiencies identified by the court in this order.

9 Plaintiff is informed he must demonstrate in his complaint how the conditions complained  
10 of have resulted in a deprivation of plaintiff’s constitutional rights. See Ellis v. Cassidy, 625 F.2d  
11 227 (9th Cir. 1980). The complaint must allege in specific terms how each named defendant is  
12 involved. There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or  
13 connection between a defendant’s actions and the claimed deprivation. Rizzo v. Goode, 423 U.S.  
14 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740,  
15 743 (9th Cir. 1978).

16 Finally, plaintiff is advised that Local Rule 15-220 requires that an amended complaint be  
17 complete in itself without reference to any prior pleading. As a general rule, an amended complaint  
18 supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once  
19 plaintiff files an amended complaint, the original pleading no longer serves any function in the case.  
20 Therefore, in an amended complaint, as in an original complaint, each claim and the involvement  
21 of each defendant must be sufficiently alleged.

22 Accordingly, based on the foregoing, it is HEREBY ORDERED that:

- 23 1. Plaintiff’s complaint is dismissed, with leave to amend, for failure to state any claims  
24 upon which relief may be granted under section 1983;
- 25 2. The Clerk’s Office shall send plaintiff a civil rights complaint form;
- 26 3. Within **thirty (30) days** from the date of service of this order, plaintiff shall file an  
27 amended complaint; and

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1           4.     If plaintiff fails to file an amended complaint in compliance with this order, the court  
2                 will recommend that this action be dismissed, with prejudice, for failure to state a  
3                 claim upon which relief may be granted.

4  
5 IT IS SO ORDERED.

6 **Dated: August 8, 2005**  
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**/s/ Sandra M. Snyder**  
UNITED STATES MAGISTRATE JUDGE